

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

UNITED STATES OF AMERICA

Plaintiff,

v.

CENTRAL MAINE POWER
COMPANY

Defendant.

CIVIL ACTION NO. 90-302 B

AMENDMENT TO CONSENT DECREE

WHEREAS, this action was filed by the United States on behalf of the United States Environmental Protection Agency ("EPA") seeking (1) reimbursement of response costs incurred and to be incurred for response actions at the O'Connor Superfund Site in Augusta, Maine (the "Site"), and (2) performance of studies and response actions at the Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9601, et seq., as amended, and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901 et seq.;

WHEREAS, on September 3, 1991, the Court entered a Consent Decree ("1991 Consent Decree") lodged by the United States to resolve this action between the United States and Central Maine Power Company as a Settling Defendant under the 1991 Consent Decree;

WHEREAS, the 1991 Consent Decree in accordance with the Statement of Work ("1991

SOW”) called for source control through on-site treatment by solvent extraction of site soils and sediments, management of migration through the establishment of temporary institutional controls until groundwater remediation levels are achieved, the construction and operation of a groundwater extraction and treatment system to remove and treat groundwater contaminated with PCBs, benzene, and 1,4 dichlorobenzene, on-site ground water discharge system, and groundwater monitoring.

WHEREAS, from 1991 to 1993 an evaluation of the solvent extraction technology for contaminated soil and sediment was performed as allowed by the Consent Decree in accordance with the 1991 SOW. The evaluation concluded that the technology would not attain the performance standards for soils and sediments set in the 1989 Record of Decision (“1989 ROD”). In July 1994 EPA issued an Explanation of Significant Differences (“1994 ESD”) which modified the source control portion of the remedy. Soil and sediment containing more than ten parts per million (“ppm”) PCBs or cPAHs or 248 ppm lead would be treated using solvent extraction technology, then transported and disposed of offsite to an appropriate facility. Alternatively, the 1994 ESD provided a contingency that this material could be sent offsite for disposal without treatment. Soil and sediment containing between one to ten ppm PCBs or cPAHs would be consolidated into one area onsite and then covered with twelve inches of clean fill brought in from offsite.

WHEREAS, in October 1995, EPA invoked the contingency remedy set forth in the 1994 ESD. This allowed for the offsite disposal of soil and sediment with greater than ten ppm PCBs and cPAHs without first requiring on-site solvent extraction treatment.

Whereas the 1994 ESD conceptually delineated a five-sided area where soil and sediment

containing between one and ten ppm PCBs or cPAHs would be consolidated. Following completion of the source control this designated area had evolved into a twenty-five-sided area. The designated area will be surveyed, the boundaries simplified to the 10-sided shape shown in Appendix I Figure 3, and permanent markers placed at the turning points.

WHEREAS, in 1992 groundwater pump tests were conducted and separate phase oil was found in bedrock wells, a condition that was not detected at the time the 1991 Consent Decree was entered. Further investigation found that although there was separate phase oil in the bedrock, it appeared to be confined to a limited portion of the Site, and that dissolved concentrations of PCBs and solvents downgradient were only slightly elevated.

WHEREAS, in 1996 and 1997, efforts were focused on oil recovery from the groundwater to assist in the source control excavation rather than groundwater extraction and treatment of dissolved contaminant. Following passive recovery of oil, vacuum-enhanced oil recovery of separate phase oil continued in 2001, recovering more than 20 gallons of oil from the bedrock. On June 4, 2002, Central Maine Power ("CMP"), a Settling Defendant, submitted to EPA and Maine Department of Environmental Protection ("Maine DEP") a Technical Impracticability ("TI") Evaluation Report assessing the feasibility of remediating groundwater contamination at the Site. The TI evaluation concluded that because of the geology and hydrology of the Site, there were no technologies that could restore the ground water beneath a limited portion of the Site to drinking water quality within a reasonable time. EPA, after review and comment from Maine DEP, agreed with this conclusion and approved the report in June 2002. On June 19, 2002, pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published a notice of the availability for public review of the TI report and the proposed plan for

amending the remedial action and provided opportunity for public comment.

WHEREAS, EPA and Maine DEP have agreed that remediation of the groundwater is technically impracticable, and EPA, with the concurrence of the State, issued on September 26, 2002 a Record of Decision Amendment ("2002 ROD Amendment"), which modifies the remedy for remediation of the groundwater that was selected in the 1989 ROD.

WHEREAS, the 2002 ROD Amendment provides for the protection of human health by providing for long term monitoring of groundwater, active and passive oil recovery in groundwater and a restrictive covenant between CMP and Maine DEP that prohibits the use of groundwater without prior approval of Maine DEP. This Amendment to Consent Decree incorporates the 2002 ROD Amendment and all its attendant responsibilities, requirements and obligations thereby making it an enforceable part of the Amendment to Consent Decree.

WHEREAS, the United States and the Settling Defendant have agreed to amend the 1991 Consent Decree as set forth below to modify the obligations of the Settling Defendant to perform certain response actions and to reimburse costs to the United States. The Parties agree that this is a material modification to the Consent Decree.

WHEREAS, under Paragraph 110 of the 1991 Consent Decree, any material modification of the Consent Decree must be in writing and approved by the Court;

NOW, THEREFORE, the United States and the Settling Defendant, in consideration of the promises and covenants herein, and intending to be legally bound thereby, agree to the following modifications to the 1991 Consent Decree:

1. All terms and phrases in this Amendment to Consent Decree shall be defined as provided in the 1991 Consent Decree except as specifically provided herein.

2. The rights and obligations of the Settling Defendant and the United States are not modified except as specifically provided in this Amendment to Consent Decree.

3. Section IV. Definitions, paragraph 3 shall be amended as follows:

“Consent Decree” shall mean the 1991 Consent Decree entered by this Court on September 3, 1991, and this Amendment to Consent Decree.

“Designated Area” shall mean the area conceptually identified in the 1994 ESD and then delineated during post-source control remedial activities, where soils containing PCBs at concentrations of less than 10 parts per million but above one part per million, were consolidated. This area is depicted in Appendix I Figure 3 to this Amendment to Consent Decree.

“Explanation of Significant Difference” or “ESD” shall mean the EPA Explanation of Significant Differences relating to the Site signed on July 11, 1994 by the Regional Administrator, EPA Region I, and attachments thereto.

“Record of Decision” or “ROD” shall mean the EPA 1989 ROD relating to the Site signed on September 27, 1989, by the Acting Regional Administrator, EPA Region I, and all attachments thereto, and the 2002 ROD Amendment, Operable Unit 2, signed on September 26, 2002 by the Director of the Office of Site Remediation and Restoration, EPA Region I and all attachments thereto. The 1989 ROD is attached as Appendix I to the 1991 Consent Decree and the 2002

ROD Amendment is attached as Appendix I to this Amendment to Consent Decree.

“Site” shall mean the 23-acre parcel defined in the 2002 ROD Amendment and Restrictive Covenant, located within a twenty-eight acre parcel owned by Settling Defendant. With the conclusion of the source control remedial action, principal features of the Site include the upland marsh, a dirt road through the center of the Site, the two former lagoons, now restored as wetlands, and various monitoring wells. This area is depicted in Figure 5 of Appendix I to this Amendment to Consent Decree.

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the remedial design, remedial action, and operation and maintenance of the remedy at the Site, as set forth in Appendix II to the 1991 Consent Decree, the 1994 revised SOW which was attached to the 1994 ESD, and the 2003 SOW as set forth in Appendix II to this Amendment to Consent Decree. If a conflict arises between the 1991 SOW, the 1994 revised SOW, and the 2003 SOW, the 2003 SOW shall control.

“Technical Impracticability” or “TI” waiver shall mean the determination made by EPA, Region I, and incorporated in the ROD 2002 Amendment, that it is technically infeasible to restore the groundwater beneath a limited portion of the

Site to drinking water standards within a reasonable time frame. This area is depicted in Figure 3 of Appendix I to this Amendment to Consent Decree.

4. Section VI. Performance of the Work by Settling Defendant, shall be amended as follows:

Paragraph 8.b., delete “pumping and carbon adsorption treatment of contaminated groundwater” and insert “active oil recovery implemented annually and passive oil recovery implemented the remainder of the year.”

Paragraph 14.k., insert the following sentence at the end of the paragraph: “[f]or purposes of the Amendment to Consent Decree the Settling Defendant shall submit to EPA two (2) bound and one (1) unbound copy of each Work Plan and any other submission required by the 1991 Consent Decree or this Amendment to Consent Decree or the 2003 SOW.”

Paragraph 16., shall be amended by adding the following language to the end of the first sentence: “and the Cleanup and Performances Standards set forth in the 2003 SOW, Appendix II to this Amendment to Consent Decree.”

5. Section IX. Quality Assurance; Sampling, shall be amended as follows:

Paragraph 24., insert the following sentence at the end of the paragraph “[f]or purposes of the Amendment to Consent Decree the Settling Defendant shall

submit to EPA quarterly progress reports as described in Section XI of the 1991 Consent Decree, or less frequently as agreed to by the project coordinators. The Settling Defendant shall submit to EPA and Maine DEP the quarterly reports on January 10, April 10, July 10 and October 10 of each calendar year, beginning with the quarter that follows entry of this Amendment to Consent Decree, unless the frequency has been changed by agreement of the project coordinators.”

Paragraph 25., insert the following sentence at the end of the paragraph: “[f]or purposes of the Amendment to Consent Decree the Settling Defendant shall notify EPA and the Maine DEP no less than fourteen (14) days in advance of any sample collection activity.”

6. Section XI. Reporting Requirements, shall be amended as follows:

Paragraph 30., insert the following sentence at the end of the paragraph: “[f]or purposes of the Consent Decree the Settling Defendant shall submit to EPA two (2) copies of quarterly progress reports.”

7. Section XVIII. Reimbursement of Response Costs, shall be amended as follows:

Paragraph 55., insert the following sentence at the end of the paragraph: “[f]or purposes of the Consent Decree the Settling Defendant shall make payment by means of a certified check made payable to ‘EPA Hazardous Substances Superfund,’ and referencing the O’Connor Co. Superfund Site Special Account.”

8. Section XXVIII. Notices and Submissions, shall be amended as follows:

Paragraph 106., under the paragraph "As to the United States" delete "EPA RPM, O'Connor Co. Superfund Site, Maine and Vermont Superfund Section, Waste Management Division (HPS-CAN2) J.F.K. Federal Building Boston, MA 02203" and replace with

"EPA RPM - O'Connor Company Superfund Site
Maine, Vermont, and Connecticut Superfund Section (HBT)
US EPA Region I
One Congress Street
Suite 1100
Boston, MA 02114"

and "As to the Settling Defendant" delete "William H. Laubenstein III" and replace with "R. Scott Mahoney".

9. Section XXIX. Effective Date, shall be amended as follows:

Paragraph 107., after the first sentence add the following sentence: "[t]he effective date of this Amendment to Consent Decree shall be the date this Amendment to Consent Decree is entered by the U.S. District Court for the District of Maine."


SO ORDERED THIS ____ DAY OF
_____, 2004

UNITED STATES DISTRICT JUDGE

FOR THE UNITED STATES

THOMAS L. SANSONETTI
Assistant Attorney General
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Division
United States Department of Justice

DATED 1-21-04

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FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

DATED 9-23-03

Robert W. Varney,
Regional Administrator
U.S. Environmental Protection Agency
New England Region
1 Congress Street, Suite 1100
Boston, MA 02114-2023

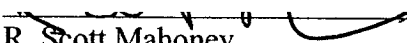
DATED 9/22/03

Suzanne Childress
Senior Enforcement Counsel
U.S. Environmental Protection Agency
New England Region
1 Congress Street, Suite 1100 (SES)
Boston, MA 02114-2023

THE UNDERSIGNED SETTLING DEFENDANT enters into this Consent Decree relating to the O'Connor Company Superfund Site

FOR CENTRAL MAINE POWER COMPANY

09/18/03
Date

Signature: 
Name: R. Scott Mahoney
Title: Managing Attorney
Address: 83 Edison Drive
Augusta, Maine
~~044351~~ 04336

Agent Authorized to Accept Service on Behalf of Central Maine Power Company:

Name (print): R. Scott Mahoney
Title: Managing Attorney
Address: 83 Edison Drive
Augusta, Maine 04336
Telephone: _____